

NOTICE

*Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MARIANNE A. JACOBS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-10430  
Trial Court No. 1JU-08-1304 Cr

MEMORANDUM OPINION

No. 5572 — March 10, 2010

Appeal from the District Court, First Judicial District, Juneau,  
Keith B. Levy, Judge.

Appearances: Margi A. Mock, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
Angela D. Kemp, Assistant District Attorney, and Daniel S.  
Sullivan, Attorney General, Juneau, for the Appellee.

Before: Coats, Chief Judge, and Mannheimer and Bolger,  
Judges.

MANNHEIMER, Judge.

Marianne A. Jacobs appeals her conviction for driving under the influence, AS 28.35.030(a). She asserts that the police officer who performed the traffic stop had no reasonable suspicion to do so, and thus all of the evidence of her intoxication should have been suppressed.

At the evidentiary hearing in the district court, Juneau Police Sergeant Paul Hatch testified that, shortly before 1:00 a.m. on October 15, 2008, he was behind Jacobs's vehicle as she drove away from downtown Juneau on the Egan Highway. Hatch noticed that Jacobs's vehicle was drifting back and forth within her lane as she drove, going from the fog line (on the right) over to the center line, and back again. Over the course of approximately two miles, Jacobs drifted back and forth six times. At one point, according to Hatch's testimony, Jacobs drifted across the center line of the highway, and then back to the middle of her lane. Based on these observations, Hatch stopped Jacobs. The ensuing investigation revealed that Jacobs was under the influence.

Hatch activated his video recorder as he followed Jacobs's vehicle; the resulting video showed the movements of Jacobs's vehicle, the traffic stop, and the administration of field sobriety tests. During the evidentiary hearing, the prosecutor played this video for the court, and a DVD of this video is part of the record in this appeal.

During the cross-examination of Sergeant Hatch, Jacobs's defense attorney pointed out that the video showed that Hatch, too, was drifting within his lane of travel as he followed Jacobs. The defense attorney suggested that the weather (both wind and rain) affected the ability of both Jacobs and Hatch to drive that night.

Hatch agreed that his vehicle was moving across the traffic lane lines, but he asserted that this was not because of weather conditions. Hatch testified that, during his attempt to catch up with Jacobs, he was using a technique called "Emergency Vehicle Operation and Control", which includes purposely driving his vehicle toward the center of the road, with little regard for the marked traffic lanes. He asserted that the wind was not giving him trouble in controlling his vehicle.

Based on the evidence presented at the hearing, District Court Judge Keith B. Levy found that Jacobs had repeatedly drifted back and forth within her lane and that, at one point, she drove her vehicle “onto or over the [center] lane divider”.

Judge Levy acknowledged that the inclement weather provided a potential explanation for Jacobs’s drifting, but he pointed out that the law does not require the police to rule out all potential innocent reasons for a motorist’s observed conduct before they initiate a traffic stop. The judge concluded that Jacobs’s repeated weaving or drifting gave Hatch reasonable suspicion to stop Jacobs to determine if she was driving while under the influence.

Following Judge Levy’s ruling, Jacobs entered a *Cooksey* plea<sup>1</sup> to the charge of driving under the influence, preserving her right to renew her suppression argument on appeal.

On appeal, we must view the evidence in the light most favorable to Judge Levy’s ruling.<sup>2</sup> Viewing the evidence in that light, the traffic stop in this case was valid. Both this Court and the Alaska Supreme Court have upheld traffic stops based on police observations that a vehicle was repeatedly weaving within its lane of travel. *See Ebona v. State*, 577 P.2d 698 (Alaska 1978), and *Hamman v. State*, 883 P.2d 994 (Alaska App. 1994).

Moreover, in Jacobs’s case, Judge Levy found that Jacobs drove onto or over the center line. This, in itself, would have justified a traffic stop — because, under 13 AAC 02.050, a motorist is required to remain within the right-hand lane of travel unless they are overtaking and passing another vehicle proceeding in the same direction,

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<sup>1</sup> *Cooksey v. State*, 524 P.2d 1251, 1255-57 (Alaska 1974).

<sup>2</sup> *Schaffer v. State*, 988 P.2d 610, 612 (Alaska App. 1999).

preparing for a left turn, or encountering some obstruction that makes it necessary to drive their vehicle to the left of the center of the highway.

Jacobs renews her argument that her vehicle's erratic travel was the product of the weather conditions. But as Judge Levy noted when he issued his decision, the police are not required to affirmatively rule out all potential innocent explanations of the conduct they have observed.<sup>3</sup> Moreover, Sergeant Hatch testified that, despite the weather, he was in control of his vehicle. Based on this testimony, Judge Levy could reasonably conclude that Hatch had at least a reasonable suspicion that Jacobs's weaving or drifting was not attributable to the weather.

For these reasons, the judgement of the district court is AFFIRMED.

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<sup>3</sup> See *Marsh v. State*, 838 P.2d 819, 821 (Alaska App. 1992): "The 'reasonable suspicion' test [does] not require [an officer] to affirmatively negate all other explanations before stopping [a motorist], nor [does] it require the State to show that it was 'more probable than not' that [a stop was justified]. Rather, the State had to establish only that there was a substantial possibility that police [intervention] was [justified]."